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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
Whether there has been a violation  
of the Securities Act of Washington by:

DAVID L. COULTER,

Respondent.

Order No. S-01-064-03-SC01

STATEMENT OF CHARGES AND NOTICE  
OF INTENT TO ENTER AN ORDER TO  
SUSPEND REGISTRATIONS, IMPOSE  
FINES, CHARGE COSTS, AND ORDER  
DISGORGEMENT

Case No. S-01-064

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THE STATE OF WASHINGTON TO:

David L. Coulter, CRD #2587409  
187 Parfitt Way SW  
Bainbridge Island, WA 98110

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**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondent, David L. Coulter, has violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order suspending David L. Coulter's securities salesperson and investment adviser registrations, imposing fines, charging costs, and ordering disgorgement pursuant to RCW 21.20.110. The Securities Administrator finds as follows:

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**TENTATIVE FINDINGS OF FACT**

**RESPONDENT**

1. **DAVID L. COULTER** ("Coulter"), CRD #2587409, has been registered with the State of Washington as a securities salesperson since 1998, and as an investment adviser representative since 2000. Coulter has been employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") since

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STATEMENT OF CHARGES AND NOTICE OF INTENT  
TO ENTER AN ORDER TO SUSPEND REGISTRATIONS,  
IMPOSE FINES, CHARGE COSTS, AND ORDER  
DISGORGEMENT

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 January of 2000. From July 1998 to January 2000, Coulter was employed by Morgan Stanley DW Inc. as  
2 a securities salesperson. Coulter resides in Bremerton, Washington.

### 3 **NATURE OF RESPONDENT'S CONDUCT**

4 2. Ralph and Eleanor T. are both Washington residents, age 88 and 82, respectively. Ralph  
5 suffered a stroke in 1989 that left him legally blind in both eyes. He had a second stroke in 1997 that  
6 makes it difficult for him to walk and adversely affects his ability to think and make decisions. Ralph  
7 was diagnosed as being in the early stages of Alzheimer's disease in February of 2000.

8 3. Prior to Ralph's first stroke, Eleanor had relied solely on her husband to manage their  
9 financial affairs. Eleanor has little to no understanding, knowledge or experience regarding securities or  
10 the securities markets.

11 4. Ralph and Eleanor opened an account at Morgan Stanley DW Inc. in late 1999 with the  
12 proceeds from the sale of their home. Coulter was assigned to their account. Ralph and Eleanor invested  
13 virtually the entire account in a money market fund. Coulter left Morgan Stanley DW Inc. for Merrill  
14 Lynch in January 2000. Shortly thereafter, Ralph and Eleanor transferred their account to Merrill Lynch.  
15 Coulter continued to handle the account.

16 5. In conjunction with the account transfer, Coulter filled out and signed a Merrill Lynch  
17 "retail account profile" for Ralph and Eleanor's account in January of 2000. This profile lists Ralph and  
18 Eleanor's investment objective as income and their account risk factor as conservative.

19 6. At the time their account was transferred to Merrill Lynch, Ralph and Eleanor's annual  
20 income was approximately \$36,000, and their net worth was approximately \$250,000. Ralph and  
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1 Eleanor's primary investment objectives were short-term; they wanted to protect their principal and  
2 supplement their monthly income with an income producing investment of a liquid nature. Liquidity was  
3 an essential requirement of any investment for Ralph and Eleanor, as they were concerned about their  
4 future health care and assisted living expenses. Creating an inheritance for their heirs was not one of  
5 their investment objectives.

6 7. On or about June 28, 2000, Coulter met with Ralph and Eleanor in their home, ostensibly  
7 for the purpose of a "portfolio review." Sometime during the course of the meeting, Coulter  
8 recommended that Ralph and Eleanor sell their existing money market fund holdings and purchase a  
9 Merrill Lynch Retirement Power Variable Annuity ("ML Power VA") and a Merrill Lynch Retirement  
10 Plus Variable Annuity ("ML Plus VA").<sup>1</sup>

11 8. The ML Plus VA imposes a deferred sales charge for withdrawals made within seven years  
12 of the purchase of the variable annuity. The deferred sales charge is 7% of the amount of the premium  
13 withdrawn during the first year after that premium is paid, and decreases by 1% annually to 0% after  
14 seven years.

15 9. On or about July 18, 2000, Eleanor signed an application to purchase a ML Power VA, and  
16 a separate application to purchase a ML Plus VA. Ralph did not sign either application. Ralph could not  
17 have been designated an owner of the ML Plus VA, as pursuant to the terms of that annuity contract,  
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19 <sup>1</sup> An annuity is a life insurance contract between an individual and an insurance company. The individual buys an income stream in the form of annuity payments  
20 for a specified period of time. Payments can begin immediately or be deferred until a specified future time. During the accumulation phase of a deferred annuity,  
21 investment growth is tax-deferred. Fixed annuities offer a guaranteed rate of return, while variable annuities offer investment choices that fluctuate in value over  
22 time with that of an underlying securities portfolio or other index of performance.

1 persons eighty-five years of age or older were prohibited from ownership.

2 10. On or about July 28, 2000, Ralph and Eleanor presented Coulter with a check for \$200,000  
3 for the purpose of purchasing a ML Power VA and a ML Plus VA, with \$100,000 being distributed to  
4 each annuity. At the time of the purchase, the \$200,000 represented 80% of their net worth.

5 11. Coulter failed to adequately explain the variable annuities to Ralph and Eleanor. Ralph and  
6 Eleanor believed that they would be able to freely make withdrawals from both annuities as a means to  
7 supplement their income. They did not understand that withdrawals from the ML Plus VA were subject  
8 to a deferred sales charge.

9 12. During the purchase of the ML Power VA and ML Plus VA, the purchaser must distribute  
10 the investment among one or more sub-accounts within the annuity on a percentage basis. Each sub-  
11 account chosen corresponds to a particular mutual fund. For both the ML Power VA and the ML Plus  
12 VA, Coulter chose to invest in several mutual funds on behalf of Eleanor. The majority of the mutual  
13 funds selected by Coulter had long-term investment objectives.

14 13. Pursuant to the ML Power VA contract issued on July 31, 2000, Eleanor is scheduled to  
15 receive the first of her periodic annuity payments in July of 2011, at which time she will be 90 years old.  
16 Pursuant to the ML Plus VA contract issued on July 31, 2000, Eleanor is scheduled to receive the first of  
17 her periodic annuity payments in July of 2006, at which time she will be 85 years old. Ralph is the  
18 primary beneficiary of both annuities. Ralph and Eleanor's son is listed as the contingent beneficiary of  
19 both annuities.

20 14. Coulter received commissions totaling \$9,000 for his sale of the variable annuities to Ralph  
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1 and Eleanor.

2 15. By May 25, 2001, the ML Power VA and ML Plus VA annuities had lost \$21,173.18 or  
3 11% of their total value.

4 Based upon the above Tentative Findings of Fact, the following Conclusions of Law is made:

5 **CONCLUSIONS OF LAW**

6 1. The offer and/or sale of the variable annuities described above constitutes the offer and/or  
7 sale of a security as defined in RCW 21.20.005(10) and (12).

8 2. David L. Coulter, as described above, has violated RCW 21.20.702 by recommending the  
9 purchase and sale of securities to Ralph and Eleanor T. without reasonable grounds to believe that the  
10 transactions were suitable for them. Such practice is grounds for the suspension of his salesperson and  
11 investment adviser representative registrations pursuant to RCW 21.20.110(1)(b), and for the imposition  
12 of fines pursuant to RCW 21.20.110(1).

13 **NOTICE OF INTENT TO SUSPEND REGISTRATIONS**

14 Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and  
15 Conclusions of Law, the Securities Administrator intends to order that the securities salesperson  
16 registration and the investment adviser representative registrations of Respondent David L. Coulter be  
17 suspended for a period of 30 days.

1 **NOTICE OF INTENT TO IMPOSE FINES**

2 Pursuant to RCW 21.20.110(1) and (4), and based upon the above Tentative Findings of Fact and  
3 Conclusions of Law, the Securities Administrator intends to order that Respondent David L. Coulter shall  
4 be liable for and pay a fine in an amount not to exceed \$10,000.

5 **NOTICE OF INTENT TO CHARGE COSTS**

6 Pursuant to RCW 21.20.110(7), and based upon the above Tentative Findings of Fact and  
7 Conclusions of Law, the Securities Administrator intends to order that Respondent David L. Coulter shall  
8 be liable for and pay the costs, fees, and other expenses incurred in the conduct of the administrative  
9 investigation and hearing of this matter.

10 **NOTICE OF INTENT TO ORDER DISGORGEMENT**

11 Pursuant to RCW 21.20.110(8), and based upon the above Tentative Findings of Fact and  
12 Conclusions of Law, the Securities Administrator intends to order that Respondent David L. Coulter shall  
13 disgorge the commissions he earned, as described above, in an amount of \$9,000.

14 **AUTHORITY AND PROCEDURE**

15 This Order is entered pursuant to the provisions of RCW 21.20.110, and is subject to the provisions  
16 of RCW 21.20.120 and Chapter 34.05 RCW. The Respondent may make a written request for a hearing as  
17 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING  
18 accompanying this order. If the Respondent does not request a hearing in this matter, the Securities  
19 Administrator intends to adopt the foregoing Tentative Findings of Fact and Conclusions of Law as final,  
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1 and enter a permanent order against the Respondent suspending registrations, imposing fines, and  
2 ordering disgorgement as described above.

3 DATED this 12<sup>th</sup> day of November , 2003.

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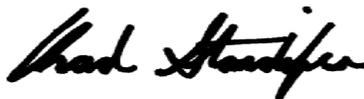
6 DEBORAH R. BORTNER  
7 Securities Administrator

8 Approved by:

9 Presented by:

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11 Michael E. Stevenson  
12 Chief of Enforcement

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14 Chad C. Standifer  
15 Staff Attorney